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The *Ontario Human Rights Code, 1982* has expressly included sexual harassment as a prohibited ground of discrimination. Since it became law, and up to the middle of last year, the commission received over 400 complaints alleging sexual harassment.

Sexual Harassment in the services industry



by Fern Gaspar

A large majority of the complainants are waitresses — usually very young; often, they are students working during the summer or drop-outs from school or university or just young women starting their working life. They are vulnerable because they lack social experience and usually have a desperate need to continue working so that their record may show that they have had work experience — a prerequisite for obtaining a better job. Such women will frequently try to cope with sexual harassment in the workplace, hoping that their unresponsiveness alone will convey the message and that eventually they will be allowed to work in peace. In many instances, however, this only enrages the harasser and leads to retaliation, resulting in loss of employment. It is usually at this time that the complaint is received by the commission. Now the young woman comes forward and protests against repeated and, often, gross

sexual advances by her boss, who may be the manager or owner of the restaurant.

It is interesting to note that sexual harassment cases have a high rate of settlement. Of the 294 closed employment cases for the period between June 1982, when the sexual harassment clause was included in the Code, and March 31, 1986, 76 per cent were settled by the parties. Settlements usually involve monetary compensation for lost earnings and psychological hurt; they may include job offers where appropriate, letters of apology, issuance or correction of references, educational seminars and the institution of anti-harassment policies. The stories of these complaints do not represent extraordinary events; rather, they reflect the pervasiveness of the problem. Given the small scale of most restaurant operations and the independent, entrepreneurial and proudly individualistic type of respondents involved in many of

these cases, the problem imposes a reactive, case-by-case approach and is often not conducive to pro-active educational work. However, the indications are that, while individual respondents often engage in harassment against other waitresses, they do *not* repeat such behaviour after having been investigated by the commission and after they have experienced the kind of settlement that is called for when the evidence substantiates the allegations.

When the young women file a complaint and persist in pursuing the case, they are not only claiming their right to damages for the hurt they have suffered, they are, at the same time, advancing the struggle of all others in similar situations to ensure a non-sexist work environment.

Fern Gaspar is the Co-ordinator of Statistics and Planning with the Ontario Human Rights Commission.

The 'equal pay' issue

by Nancy Della-Nebbia

'Pay equity is the only method of achieving fairness for women in the work force, and no employer should be able to plead poverty to get off the hook,' says Sheila Trainer, executive secretary of the Confederation of Ontario University Staff Associations, which represents 10,000 employees.

The concept of pay equity gained momentum after a 1978 amendment to the *Canadian Human Rights Act* established that women will be paid on an equal level with men for performing work of equal value. Prior to this, and since 1951 in Ontario, equal pay legislation required that women and men be paid the same for identical or substantially similar jobs.

In February of this year Labour Minister William Wrye brought Ontario one step closer to addressing these inequities in the workplace when he presented Bill 105, an 'Act to Provide Pay Equity in the Public Sector,' for first reading. Armed with 1983 Statistics Canada figures demonstrating that women earn 62 per cent of what men earn, women's rights groups view this bill as legislation to build on in the struggle against years of wage discrimination.

For women in the broad public and private sectors the battle for equal value legislation continues. Employers in private industry and business continue to reject pay equity, claiming that it will lead to increased operational costs as a result of new administrative and implementation requirements.

According to Kathryn Filsinger, industrial relations adviser of the Canadian Manufacturers' Association, 'Damage to the economy is one of the major drawbacks of pay equity.' The CMA's submission paper to the panel on public consultation states that many manufacturers, unable to increase consumer prices without forfeiting a part of their market, will have to absorb costs by way of work force reductions, layoffs and reduced training costs and opportunities.

Regardless of employers' fears, allies of the proposed policy for

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The 'equal pay' issue

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Polysar's Valerie Towler, Manager, Employee Communication and Employment Equity: 'Government must introduce pay equity throughout the province in a manner least disruptive to the business community.'

the private sector do exist. Morguard Investments Limited of Toronto strives to achieve internal equity by implementing job evaluation with an equal value component. Paula Gradson, personnel manager for the investment firm, indicated in the December 1985 issue of *Report on Business* magazine that the company wanted to implement something before being pressured by legislation.

Morguard used the Position Analysis Questionnaire, a job evaluation method, to assess 400 white collar jobs at a cost of \$40,000. Management, clerical and secretarial positions were reviewed, 63 per cent of which were held by women. Results of the evaluation revealed that 16 per cent of employees were being paid \$1,000 - \$2,000 per year less than the minimum salary range.

Elsewhere, Polysar Limited of Sarnia, an international petrochemical company with sales of over \$2 billion annually and 6,000 employees worldwide, also advocates pay equity in the private sector. With an affirmative action program firmly in place and a history of assessing job evaluation procedures for gender based inequities, Polysar recently took its commitment to a fairer work environment one step further by conducting an evaluation of average pay amongst salaried employees. According to Valerie Towler,

manager of Employee Communications, results of this study revealed that, at certain levels, a five per cent gap existed between wages earned by males and those earned by females.

Polysar's approval of the government's intentions in respect to extending pay equity legislation to the private sector is not given without a warning, admits Towler. 'The government must introduce pay equity throughout the province in a manner least disruptive to the business community. It should provide minimum guidelines that companies could refer to when examining their own wage setting policies, and subsidize small businesses unable to manage the costs of implementing pay equity initiatives.'

Despite the support for private sector policy on pay equity, exemplified in the cases cited, the majority of employers remain entrenched in their fears of such intervention and will resist until actual pay equity law is introduced by the Attorney General. According to Ann Irwin, special assistant for Women's Issues with the Attorney General's Office, legislation is expected by the end of this year.

Nancy Della-Nebbia is a publications clerk with the Ontario Human Rights Commission.

Intercultural communication

Sheridan College in Toronto has instituted a course in intercultural communication. The program examines the current ethnic and racial composition of Ontario and the changes that have taken place over the past decade. Working with people from diverse cultural and racial backgrounds now demands a heightened sensitivity and a questioning of traditional attitudes and practices. Whether one works in community and social services, business, industry or government, the development of specialized skills in intercultural communication will enhance one's ability to work in multicultural and multiracial settings.

The course that Sheridan College has instituted covers the areas of immigration policies and settlement patterns, human rights, racial conflict and its resolution, and the evolution of multicultural policy.

Practical courses address such topics as effective cross-cultural communication, cultural self-awareness, managing cultural and

racial differences, and accessibility of the workplace to people from diverse cultural and racial backgrounds.

A focus on suburban issues, as well as the practical application of professional and paraprofessional skills in different cultural contexts, is essential to the program. The course, leading to a post-diploma certificate, has been developed jointly by the college's School of Applied Arts and Communications, its Continuing Education Division and an advisory committee of community experts. The program is intended to appeal to professionals, workers and volunteers in the fields of health care, counselling, social work, recreation, law enforcement, education, early childhood education and housing.

Readers interested in this new venture are asked to contact Sheridan College's School of Applied Arts and Communications, McLaughlin Road, Box 7500, Brampton, Ontario L6V 1G6, or phone (416) 459-7533.

Women only



A board of inquiry, chaired by Professor Ed Ratushny, was appointed to hear the case of Mr. Jack Ponte, who applied to Hurontario Travel for a job and who was informed that only women would be hired. The agency had advertised in the newspaper for a travel counsellor.

Mr. Ponte arranged for both a male and a female friend to call the agency. The male received the same answer as Mr. Ponte, but the female, who represented herself as having the same, or lesser, qualifications, was granted

an interview. Professor Ratushny found that granting an interview to a female but not to a male contravenes the *Human Rights Code*. Thus, if there was no valid reason for refusing Mr. Ponte an interview while granting one to his female friend, discrimination had occurred. Consequently, the board concluded that discrimination had occurred and awarded Mr. Ponte \$750. The travel agency was ordered to attend a one-day training session at the Ontario Human Rights Commission to review employment practices under the Code.

Kellerman and Al's Restaurant and Tavern

by Lisa Feld

The complainant, John Kellerman, has cerebral palsy, a condition that severely impairs his physical movements and speech. In a complaint that went to a board of inquiry, he alleged that he was denied equal treatment with respect to services by the respondent restaurant and its owner, George Zarafonitis, because of his physical handicap.

Mr. Kellerman alleged that he drove his motorized wheelchair to the restaurant and was assisted into the dining room by some customers. He ordered a meal and a glass of wine. He was served the

meal, but not the wine. Before he had finished eating, Mr. Kellerman said he was 'roughly' escorted out of the restaurant by the owner. This evidence was generally supported by the waitress who had served him. Mr. Zarafonitis testified that he had told the waitress not to serve the wine as he believed that Mr. Kellerman was in an intoxicated condition.

The board chairman explained that those who serve liquor must be educated about the manifestations of handicaps like the complainant's, and therefore concluded that Mr. Zarafonitis was negligent in

assuming that Mr. Kellerman was intoxicated.

The board also found that the complainant was discriminated against in being escorted out of the restaurant before he wished to leave. The board chairman indicated that it appeared that Mr. Zarafonitis may have been upset at the mess created by Mr. Kellerman while he ate, and for this reason, and in order not to upset his other customers, he, in a very firm and determined manner, made the complainant leave against his will. The board concluded that these two incidents violated the Code as they

resulted in Mr. Kellerman's being denied equal treatment with respect to a service because of his handicap.

In assessing the appropriate damages, the board took into account that Mr. Kellerman was 'extremely enraged,' claimed that his 'integrity was damaged' and was 'tired of being pushed around.' Therefore, the board awarded him \$500 (including interest) for his 'hurt feelings and damaged integrity.'

Lisa Feld is a law student who worked for the Ontario Human Rights Commission during the summer of 1986.

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Editorial

An Uncomfortable Question



Many questions were raised by the arrival of 155 Tamil refugees in Canada, and, at this writing, not all of them have been fully resolved.

Unfortunately, there can be little doubt that the presence of this small group in this country has initiated a significant reaction among some Canadian citizens and that this backlash may delay the current legislative attempts to bring order into our refugee determination process. Worse, it has possibly injected into the discussion the unwelcome undertone of racism.

The 155 Tamils were not the first to come to Canada's shores in breach of ordinary procedures. Three thousand Portuguese preceded them earlier this year. They claimed that they were Jehovah's Witnesses and, as such, persecuted in their homeland. It appeared that some claims were made merely to get the claimants into the determination process, which, under present circumstances, would assure them of a stay in Canada of from two to five years. But the coming of the Portuguese engendered none of the emotion that surrounded the issue of the Tamils.

Refugee and immigration matters are complex, and there is debate about the current suitability of

the law to deal with people in a proper, fair and efficient manner. We do not know whether these Tamils are, or are not, refugees, but we do know that they, like everyone else, deserve a fair hearing so that their claims may be either substantiated or rejected. In other words, they need to be treated like everyone else. Canadians would not wish to see a repetition of the tragic time in the 1940s when the St. Louis, a ship loaded with refugees from Nazi Germany, was turned back at the Canadian coast by our authorities. The ship went back to Europe, and many of those on board eventually perished. As we now know, racial prejudice was at the basis of the government's policy. We have come a long way since then, and we must not allow our course to be changed at this late time.

We live far away from the places where bitter civil strife and war cause people to flee for their lives. Refugees are not immigrants who can stand in line to wait their turn; they are products of disorderly conditions that they cannot control. We are the inhabitants of a fortunate country to which people would like to come to build their lives. The least we can do is to make sure that everyone is given an equal opportunity before the law.

Chairman's corner



Every so often, I find myself lulled into a feeling of complacency as I reflect upon the tremendous strides made in Ontario's struggle for human rights.

Yet, as we approach December 10, 1986 — the 38th anniversary of the Universal Declaration of Human Rights, a document that was designed to provide an international stimulus for moving nations of the world toward more humane and decent treatment of their inhabitants — I temper that complacency with reality.

Respect for human rights is an old tradition in Ontario, but it is a tradition fraught with fragility and vulnerability. In a community as ethnically diverse and multiculturally resplendent as ours, and in economic conditions that encourage self-centredness rather than othermindedness, we must continue to guard against that tradition becoming less cherished, more tarnished.

Ours is a tradition in which we can take pride. Our history is replete with significant reminders of the constructive, if not inspirational, steps taken to forward our goal of equality of opportunity and the protection of human rights for the various groups and individuals that constitute our population.

Although Ontario's *Human Rights Code* derives its inspiration from the Universal Declaration, it is important to note that Ontario's *Racial Discrimination Act* preceded the Declaration by four years. Our province was also the first jurisdiction in Canada to give formal and public recognition to the moral, social and economic consequences of discrimination by establishing a human rights commission and enacting a comprehensive human rights code in 1962. We are continually responding to ever-changing and emerging human rights issues, thus remaining in the

forefront of human rights legislation.

So, if things are so good, why are they so bad? Ontario does not, and cannot, exist in a parochial vacuum. Its development with respect to human rights depends upon the global context. According to major international human rights organizations, more than 100 countries throughout the world deny fundamental human rights to, engage in senseless slaughter of, or oppress some or all of, their people. Many of these nations were signatories to the Universal Declaration and to the two United Nations' international conventions that gave binding legal effect to the Declaration, and their signatures oblige them to promote human rights, freedom, justice and peace at home and abroad.

This is where we all have a crucial contribution to make — to ensure that the effective machinery necessary for the protection of the rights of the individual and the community is in place and functioning. We, who devote ourselves to the preservation of justice and equality, are inextricably involved in the process. The strategies may be debatable. What is not, is the necessity for all of us to confront, head on, the menacing and ugly face of hate and persecution. We must work together to ensure that this deprivation of human dignity becomes part of our memory and not part of our destiny.

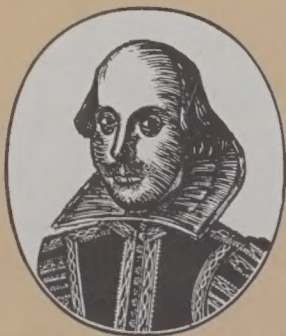
World history is speckled with the remarkable courage of a very few against the overwhelming many. Two people, to my mind, currently exemplify this courage: Anatoly Shcharansky and Winnie Mandela. Undaunted by the enormity of their foe, inspired by the justice of their cause, they act out of conscience and out of courage.

It has been said that the courage of these two people is the courage of heroes, the courage of greatness. Of us, mercifully, less is required. Our courage need not be as great. But we must remember, in courage there is greatness.

Let us stand side by side, affirm our similarities in our separateness and dedicate ourselves, on this anniversary of hope and idealism, to people everywhere who suffer injustice and who still have the will to dream of freedom.

The Merchant of Venice—again

Without going into the merits of the decision by the Waterloo Board of Education regarding the teaching of Shakespeare's *Merchant of Venice*,* one is moved to draw one conclusion that this much-discussed incident has raised: No teacher in Ontario (or anywhere else, for that matter) should teach a subject that touches on sensitive human relations



without being properly prepared to do so. Whether the author is Shakespeare or Steinbeck, Hemingway or Richler, teachers must know the effects that the subject matter may have on their students. We cannot take it for granted that these students come to the classroom devoid of any prejudice. Teachers must be equipped to meet this challenge with intelligence and

understanding. What is at issue is not the *Merchant of Venice* but the need to enhance the sensitivity of our teachers to inter-racial and inter-religious tensions and questions.

*The board decided to suspend the teaching of the play until receiving further advice from the Ministry of Education and the Ontario Human Rights Commission.

Is adultery just cause for dismissal?

Seventy years ago, the chief of the Toronto Fire Brigade found out that one of his firemen was living with a woman who was not his wife. Both the fireman and his companion were separated from their legal spouses. The chief warned the fireman that he would be dismissed unless he suitably changed his living arrangements. The fireman refused to accept the chief's ultimatum. As a result, he was dismissed and subsequently sued for wrongful dismissal. The fireman's case reached the Ontario Court of Appeal.

The appeal court ruled that the chief had just cause to dismiss the fireman for refusing to comply with the chief's request to cease 'living in open adultery.' According to the court, the fireman's behaviour could 'affect prejudicially the reputation of his employer.'

However, judges' attitudes towards adultery have changed over the past 70 years.

In an Ontario case, a district sales manager of an office furniture manufacturer attended a convention in Florida arranged by the manufacturer's American parent company. At the convention, the district sales manager, who was married and had two children, met the wife of a fellow employee. The two began an affair which 'turned into a serious relationship...'

The sales manager and his wife separated, and the fellow employee was told by his wife about 'her feeling toward the (sales manager).' The sales manager's immediate superior was concerned that the situation could hurt the business, but after discussions with the two employees, was satisfied that it would not.

About three months later, the president of one of the manufac-

turer's major distributors made a comment to the vice-president of marketing about the relationship between the sales manager and 'his fellow manager's wife.' Under the impression that this major customer was unhappy with the sales manager, the vice-president decided that the sales manager could no longer be an employee.

Immediately following the regular Monday morning sales conference, the vice-president of marketing summoned the district sales manager into his office. The sales manager was told to 'either submit his immediate resignation or be summarily dismissed.' The sales manager was shocked. He 'had been led to believe that he had done well' and knew that he was being considered for promotion.

After seeing his lawyer, the sales manager refused to resign. The vice-president immediately fired the sales manager without telling him why he was being dismissed and without giving him an opportunity to 'meet anything that might have been alleged against him.' At the time, the 32-year-old sales manager had worked for the manufacturer for about two-and-a-half years.

At the sales manager's wrongful dismissal trial, the manufacturer argued that there was just cause for dismissal because of 'the adulterous relationship with the wife of a fellow employee,' and supported its position by citing the Toronto fireman's case.

The sales manager pointed out that the fireman's case was decided in 1918 and that relationships not acceptable then were acceptable in 1979. He also presented evidence that major customers regretted his dismissal although they knew about the affair. Moreover, the customer who had made the comment that led to the sales manager's dismissal

testified that it was of a casual nature and that he 'did not consider it any of his business.'

The judge ruled that the sales manager was wrongfully dismissed and that he should have received nine months' notice. The sales manager was awarded damages of \$18,000 plus interest and court costs.

In making his decision, the judge said he had 'no hesitation' in finding that the '(sales manager's) conduct with respect to his relationship with (his fellow employee's wife)' did no damage to the 'interests or to the reputation' of the manufacturer. The judge criticized the vice-president's 'precipitate action,' saying that if the vice-president had made an investigation, he would have discovered that the district sales manager's immediate superior had probed into the matter and 'had correctly concluded that the private affair would have no adverse effect on the operation of his department.'

...or marijuana?

[In another case, involving a different issue, an Ontario court decided that the employer's reputation would be damaged if the employee were kept on staff.]

An Ontario grocery store chain received an anonymous letter that a senior employee at one of its stores was selling marijuana and that several other store employees were among his customers. A police investigation confirmed the letter's contents. The senior employee was arrested and 11 other store employees, who were found to be purchasers of the drug, were dismissed. One of the 11, a part-time grocery clerk, sued for wrongful dismissal.

The clerk testified that he had always bought the drug at the senior employee's residence and that he had never purchased, used or kept the marijuana on the store premises. The clerk argued that his use of marijuana 'was a matter of his private life and no concern of the [store chain].'

The store chain claimed it had just cause to dismiss the clerk because his actions reflected on the store chain's reputation. The store chain presented evidence that the senior employee's drug dealing was widely known and that the public referred to the store as a 'drug mart.'

Although the judge expressed doubts that the 'buying and using of marijuana' may be 'so grossly immoral... as to justify dismissal', he ruled in favour of the store chain and dismissed the case. According to the judge, the behaviour of the clerk and his fellow employees had become public knowledge and 'could bring nothing but disrepute to the [store chain's] reputation.'

These excerpts are reprinted with the permission of the publisher from the article 'Dismissal for Off-Duty Misconduct' in the July 1986 issue of *The Employment Law Report*.

An important resource

A new 'Inventory of Ontario Government Programs and Services for Disabled Persons' has been released by the Provincial Secretariat for Disabled Persons.

The comprehensive listing, which will also be reproduced on audiotape, provides information on a wide range of programs to assist people with disabilities. It includes such areas as employment, housing, recreation, transportation and accommodation. Contact points are listed for further details of specific programs.

'Publication of this inventory reflects my commitment to provide up-to-date information on the many programs and services available through the Ontario government,' said Minister Responsible for Disabled Persons Tony Ruprecht. 'I'm sure that agencies representing the interests of persons with disabilities will find it a helpful tool,' the minister added.

Copies of the inventory are being distributed to associated organizations, agencies and government staff. Additional copies can be obtained from:

The Ontario Government Bookstore, Main Floor, 880 Bay Street, Toronto, Ontario M7A 1N8.

Imaginative initiatives in race relations

by Ruth Schweitzer-Rozenberg and Eric Whist

Earlier this year the Ottawa-based Advisory Community Committee on Ethnic Social Services (ACCESS) held a breakfast seminar for senior administrators of the health care and social services facilities in the Ottawa-Carleton region. The title of the seminar was 'Promoting Accessible Health and Social Services'. Approximately 65 people attended this well received event.

ACCESS is a voluntary inter-agency group, chaired by the Race Relations Division of the Ontario Human Rights Commission. Its purpose is to improve the quality of health and social services for visible and ethnic minorities and immigrants in the Ottawa-Carleton area.

The committee was established as a result of a workshop held in 1982, entitled 'Service Delivery in a Culturally Diverse Community'. The goals of the committee are to increase awareness of, and access to, existing health and social services and to reassess the issues and problems facing these groups. It

was in this context that the seminar was held.

It featured three principal speakers; Lily Munro, the Minister of Citizenship and Culture, was the keynote speaker. She spoke of the changing racial and ethnic composition of Ontario and the need for agencies and institutions to both recognize this change and re-examine their services to determine if they are, indeed, providing assistance to all. The minister was followed by Yew Lee, the executive director of the Ottawa-Carleton Immigrant Services Organization, who presented a profile of Ottawa's changing population. He also gave examples of inappropriate service and provided a checklist for health and social services agencies and institutions to use in evaluating the impact of their programs and policies on visible and ethnic minorities. Rita Karakas, the vice-president of the United Way of Canada, spoke about how her organization reviewed and adjusted its practices.

The seminar concluded with Mr. Lee telling participants what services and information were currently available in the Ottawa area to assist health care and social services systems in developing their abilities to serve a multiracial, multiethnic community. As a result of the seminar, a number of organizations have expressed their interest in joining ACCESS.

This year the committee will co-sponsor a research project with the Ottawa Social Planning Council on access to health and social services for visible minorities and immigrants in the Ottawa area. For the Race Relations Division, which has been actively involved in ACCESS since its inception, the committee represents a meaningful co-operative effort in promoting positive race relations.

Ruth Schweitzer-Rozenberg is a consultant, and Eric Whist is a regional supervisor, with the Race Relations Division of the Ontario Human Rights Commission.

Letters invited

We welcome your reaction to *Affirmation*. Write us—we are looking for your participation.